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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

CRP.NPD.NO.67 OF 2006

AND
CMP.NOs.532 and VCMP.No.270 of 2006

Ganesan Petitioner/ Tenant

Vs.

Mrs.Usha Rani ...Respondent. / Landlord

This Civil Revision Petition is filed u/s 25 of the Tamilnadu Building (Lease and Rent Control)Act 18 of 1960 as amended by Act 23 of 1973 and Act 1/1980. against the fair and decretal order dated 13.7.2005 passed in RCA.No.535 of 1999 on the file of the VII Judge, Small Causes Court, Chennai confirming the oder dated 26.3.1999 passed in RCOP.No.748 of 1996 ont he file of X Judge, Small Causes Court, Chennai.

For Petitioner :Mr.R.Santhanam
For Respondent: Mr.S.Parthasarathy

O R D E R

Challenge is made to the order of the Rent Control Appellate Authority, VII Judge, Small Causes Court in RCA.No.535 of 1999 whereby the order of eviction passed by the Rent Controller, X Judge, Small Causes Court, Chennai on the ground of wilful default was affirmed.

2. The Court heard the learned counsel on either side.

3. The respondent/landlord filed an application for eviction on the ground of wilful default, denial of title and also for own use and occupation stating that the petition mentioned premises was purchased by him and he has become the owner of the property which is being occupied by the revision petitioner/tenant on the monthly rent of Rs.300/- and when he purchased the property in September, 1994, he informed the same to the revision petitioner/tenant that he purchased the property

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for the purpose of opening a new branch of the office and the petitioner also agreed to pay the monthly rent of Rs.300/- from October, 1994 onwards to the respondent/landlord. But he neither paid the rent nor vacated the premises. Hence a notice was issued on 7.8.1995 to the respondent terminating tenancy on the ground of wilful default and despite the same, no rental payment was made. On the contrary, he gave a reply on 28.8.1995. Under such circumstances, there arose necessity for filinganf application for eviction on the above grounds.

4. The petitioner/tenant resisted the application contending that the respondent herein is not the owner of the property, that there was no wilful default, since he has made entire payment of rent to the previous owner and the respondent/landlord does not bonadife require the petition premises for owner's occupation.

5. On enquiry, the Rent Controller found that the petitioner/tenant has committed wilful default and ordered eviction, though denied other grounds of denial of title and also owner's use and occupation. Aggrieved tenant took it on appeal in RCA.No.535 of 1999 where the order of rent controller on the ground of wilful default was affirmed and hence the Civil Revision petition at the instance of the tenant before this Court.

6. In support of the revision petitioner, learned counsel for the petitioner would submit that in the instant case, it is true that the petitioner is the tenant making the rent of Rs.200/-p.m. and the claim of the landlord is not correct. There is no dual relationship between the parties and rental was all along made to the original owner and he has been receiving the rent. Under such circumstances, the landlord has not proved the dual relationship and hence it should have been dismissed. Instead both the Courts below have erroneously found otherwise and also recorded a finding that there was wilful default in payment of rent and hence the order of both the authorities have got to be set aside.

7. The Court heard the learned counsel for the respondent on the above contentions.

8. After hearing the learned counsel on either side and after looking into the materials available on record in particular the order under challenge, this Court is of the considered opinion that the order of lower authority has got to be sustained. It is not in controversy that the revision petitioner is the tenant in respect of the premises in question.

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The respondent/landlord filed a eviction petition stating that the said property belonged to him by way of purchase and this petitioner is tenant under him and in the instant cast it was brought to the notice of the Court that by following the formalities, the property was purchased in September, 1994 from the previous landlord and a notice was issued by him on 7.5.1992 to the revision petitioner stating that the property was sold by the first party in favour of the second party who is the landlord before the lower court and even after the intimation, there was a reply from the tenant requesting to send the copy of the sale deed and thus he did not make any payment of rental. It is pertinent to note that the property was purchased in September, 1994, and the notice was issued to the tenant on 7.8.1995 and thereafter a petition was filed before the lower court for eviction on the ground of wilful default commencing from October, 1994 to September, 1996 and hence he was in arrears to the tune of Rs.4,800/- . Now, the only contention put forth by the petitioner before the authorities below and equally here also was that he has made entire payment of rent to the previous owner. But, no material was placed before this Court and he has not even called a witness to examine to prove the fact. Under such circumstances, it was nothing but only a ruse invented to suit his defence. Under the circumstances, the contention put forth by the the learned counsel for the petitioner that entire arrears of rents have been paid to the previous owner could not be countenanced and hence it must be rejected. Apart from that, once the property has been sold to the present owner who is the respondent herein, there was no reason for the present petitioner/tenant to make any payment of rental to the previous owner. Both the authorities have rightly rejected the contention put forth by the tenant and found that he has committed wilful default for the said period and ordered eviction which has got to be sustained.

9. At this juncture, learned counsel for the petitioner would submit that the petitioner/tenant is running a grocery shop and he has to find out a suitable accommodation and sufficient time has got to be granted to him. The Court heard the learned counsel on the above contentions. Taking into consideration the facts and circumstances of the case, it is a fit case where one year time from the date of receipt of a copy of this order has to be granted to him for vacating and handing over possession to the landlord. The learned counsel for the petitioner is also directed to file an affidavit of undertaking within a period of two weeks herefrom to that effect.

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10. The Civil Revision petition is disposed of. No costs. Consequently, CMP.NOs.532 and VCMP.No.270 of 2006 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

VJY

To

1. The VII Judge, Small Causes Court, Chennai.

2. The X Judge, Small Causes court, Chennai

3.The Registrar, Small Causes Court, Chennai.

1 cc to Mr.S. Parthasarathy, Advocate, Sr. 49245
1 cc to Mr.K.R. Ramesh kumar, Advocate, sr. 49145

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